

WP(C) 5261/2007

BEFORE

HON'BLE MR.JUSTICE RANJAN GOGOI

The petitioner challenges an order dated 01.08.2007 by which, at the conclusion of a Summary Court Martial, the punishment of rigorous imprisonment of 3(three) months in Military Custody has been imposed on the petitioner's husband. A reading of the charge sheet enclosed to the writ petition would go to show that 3(three) charges were levelled against the petitioner's husband. The first is that the petitioner's husband absented himself without leave on 3rd and 4th March, 2007, inasmuch as, though by a movement order issued he was required to report at Misamari on 2nd March, 2007, he had reported to the said place only on 5th March, 2007. The second charge against the husband of the petitioner is that he had improperly got the stamp of Sadilpur Transit Camp affixed on his movement order dated 2nd March, 2007 so as to cover up the period of absence/not reporting for duty. The third charge is in respect of the false statement made with regard to the age of his sons for obtaining Railway warrant. In so far as the charges are concerned, the materials on record does not indicate that the same are disputed. In fact, it is the stated version of the petitioner that he could not report at Misamari on 2nd March, 2007 on account of the illness of his wife in support of which fact some documents have been enclosed to the writ petition. If that be so, the aforesaid charges, i.e., Charges No.1 and 2, therefore, clearly stand proved in view of the materials brought on record by the petitioner himself. In that view of the matter, the Court can have no reason to doubt the correctness of the punishment imposed.

Sri RP Sharma, learned counsel for the petitioner has expressed an apprehension that the husband of the petitioner might have been demoted as a measure of punishment. This does not appear to be correct as the order dated 01.08.2007 clearly recites that the only punishment imposed is rigorous imprisonment for 3(three) months in Military Custody.

This will bring the Court to a consideration of the quantum of the punishment imposed. Ordinarily, the Court will not interfere in such matters save and except when the peculiar facts of a case make it indispensable for the Court to so act in the interest of justice. In the present case, the failure of the petitioner's husband to report for duty at Misamari is on account of the illness of his wife, which fact is supported by the documents enclosed to the writ petition. While the aforesaid fact, serious as it is, may not act as a condonation of the lapses on the part of the petitioner, who is a disciplined soldier, the Court is of the view that the same should be legitimately be taken into account as a mitigating circumstance. In such circumstances, the Court is of the view that the period of 2 (two) months 8(eight) days or so, which the petitioner's husband has already suffered in Military Custody should be considered as sufficient punishment having regard to the gravity of the charges alleged and proved.

Writ Petition consequently is disposed of by directing that the petitioner's husband be set at liberty forthwith and the remaining period of punishment be commuted accordingly.